

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 778 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

DHIRUBHAI MULJIBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MS RV ACHARYA for Petitioner

MR HH PATEL, APP, for Respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/12/1999

ORAL JUDGEMENT

#. The Commissioner of Police, Baroda City, Baroda, issued a show cause notice as required under Section 59 of the Bombay Police Act to the present petitioner to show cause against the proposed externment of the petitioner for a period of two years. The notice made a reference to 4 offences registered against the petitioner, which were shown in the notice in a tabular form as under :-

SNo. Police Stn./CR No. Section. Disposal

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1. Makarpura Gambling Act Sec. P.T.
II 352/96 12A.
 2. Makarpura Gambling Act Sec. P.T.
II 462/96 4, 5.
 3. Makarpura Gambling Act Sec. P.T.
II 160/97 4, 5.
 4. Makarpura Gambling Act Sec. P.T.
II 414/98 12A.
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The petitioner, in reply to the show cause notice, specifically raised the contention that he has been acquitted in offence registered against him vide Makarpura Police Station C.R. No.II 352/96. The mention of it in the notice reflects mala fides and, therefore, the notice may be discharged. After the notice was received, the Commissioner of Police, Baroda City, Baroda passed an order on 17th June, 1999, externing the petitioner from Baroda City, Baroda (Rural), Anand, Panchmahal and Bharuch districts for a period of two years. In the order of externment, the offences registered against the petitioner were taken into consideration and were stated in a tabular form as under:-

SNo.	Police Stn./CR No.	Section.	Disposal
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1. Makarpura Gambling Act Sec. P.T.
II 352/96 12A.
 2. Makarpura Gambling Act Sec. P.T.
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II 160/97 4, 5.
 4. Makarpura Gambling Act Sec. P.T.
II 414/98 12A.
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#. Aggrieved by the said order of externment, the petitioner preferred an appeal under Section 60 of the Bombay Police Act and the said appeal came to be rejected by the Appellate Authority on August 30, 1999.

#. The petitioner approaches this Court with this petition under Article 226 of the Constitution challenging the order of externment and the order passed in appeal.

#. One of the grounds is that the order of externment is passed without application of mind because the case referred to in the notice and in the order of externment relating to C.R. No.II-352/96 was decided and the petitioner was acquitted and despite that fact, the case is shown as "P.T." (Pending Trial). This reflects non-application of mind and the order of externment would, therefore, be vitiated.

#. The respondents have not filed any affidavit in reply.

#. Mr. Acharya, learned Advocate appearing for the petitioner has relied on the decision of a Division Bench of this Court in the case of Suleman Husa Devji v. State of Gujarat & Another, 1989(1) GLR 101 and a decision of this Court in the case of Mustufamiya Pirshahedmiya Saiyed v. State of Gujarat, 1999(1) GLH 913 in support of the above contention.

#. Mr. Patel, learned Additional Public Prosecutor appearing for the respondents, has opposed this petition. He submitted that the petitioner is involved in criminal activities and after considering his antecedents, the externing authority deemed it fit to extern him and after giving an audience by issuing notice under Section 59 of the Bombay Police Act, the order came to be passed, after being subjectively satisfied that the petitioner deserved to be externed in public interest. He submitted that the notice cannot be said to be vague because specific grounds are given in the notice and, thereafter in the order of externment. He pressed into service a decision of this Court between Abedin Rasal Bombaywala v. Commissioner of Police, Surat & Anr., 1986 GLH 986.

7.1 Mr. Patel, however, has not met with the argument advanced by learned advocate for the petitioner in respect of non-application of mind for an offence registered against the petitioner for which the petitioner was acquitted long before the issuance of notice under Section 59 of the Bombay Police Act.

#. Having regard to the rival side contentions, if the relevant documents, namely, the notice under Section 59, the reply thereof and the externment order are considered, it is apparent that the externing authority did take into consideration offence registered vide Makarpura Police Station C.R. No.II-352/96 and considered it as a case pending trial. This aspect is reflected both from the notice as well as the externment order, if the offences stated in the tabular form are considered. In the reply to the notice, the proposed externee specifically contended about his acquittal in respect of Makarpura Police Station C.R. No.II-352/96 and alleged mala fides against the authorities. This aspect is not considered by the externing authority while passing the order and the offence is shown as pending trial and there is no reference whatsoever to the reply to the notice in this regard while passing the order.

#. The petitioner is able to establish the fact of acquittal by producing a certified copy of the judgment and order in respect of the said offence passed by Judicial Magistrate, First Class (Traffic Court), Baroda, delivered on 13th June, 1997. This is, therefore, a case reflecting gross non-application of mind on part of externing authority. The authority has passed the order in total neglect of the reply to the notice. The very purpose of providing for giving an audience by enacting Section 59 is, therefore, ignored and given a go by. This being so, the order of externment would stand vitiated. The Appellate Authority has also not considered this aspect while deciding the appeal and that order also, therefore, cannot stand once the externment order is found to be vitiated.

##. In the decisions of this Court in the case of Suleman Husa Devji (supra) and in the case of Mustufamiya Pirshahedmiya Saiyed (supra), the facts were similar. There also, the authorities have shown some case as pending trial when it was already disposed of and it was considered as a case of non-application of mind and passing of order in a mechanical manner.

##. The arguments advanced by Mr. Patel that the notice cannot be said to be vague and his attempt to place reliance on decision in the case of Abedin Rasal Bombaywala v. Commissioner of Police Surat, 1986 GLH 986 travel in a tangent to the arguments advanced on behalf of the petitioner. It is not the case of the petitioner that the notice is vague and, therefore, bad in law as the proposed externee could not make an effective

representation and, therefore, the exercise undertaken by learned Additional Public Prosecutor on this ground is in futility. No attempt is made to meet with the contentions raised by the petitioner.

##. The petition, therefore, deserves to be allowed on the grounds stated above and the same is allowed. The order of externment dated 17th June, 1999 (Annexure-C) and the order in Appeal dated 30th August, 1999 (Annexure-D) are hereby quashed and set aside. Rule is made absolute.

[A.L. DAVE, J.]

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